

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN CINDY YOUNKIN**, on February 19, 2001  
at 3:00 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Cindy Younkin, Chairman (R)  
Rep. Rick Dale, Vice Chairman (R)  
Rep. Gail Gutsche, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Dee Brown (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Larry Cyr (D)  
Rep. Bill Eggers (D)  
Rep. Ron Erickson (D)  
Rep. Christopher Harris (D)  
Rep. Joan Hurdle (D)  
Rep. Rick Laible (R)  
Rep. Jeff Laszloffy (R)  
Rep. Douglas Mood (R)  
Rep. Bob Story (R)  
Rep. Brett Tramelli (D)  
Rep. David Wanzenried (D)

**Members Excused:** Rep. Rod Bitney (R)  
Rep. Linda Holden (R)

**Members Absent:** None.

**Staff Present:** Holly Jordan, Committee Secretary  
Larry Mitchell, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 543, 2/16/2001; HB 572,  
2/16/2001; HB 573, 2/16/2001;  
HB 586, 2/16/2001; HJ 27,  
2/16/2001

Executive Action: HB 586; HB 543; HB 459; HB  
446; HB 573; HB 572; HJ 27

**HEARING ON HB 543**

**Sponsor:** REP. ROY BROWN, HD 14, Billings

**Proponents:** Peggy Trenk, Montana Association of Realtors  
Michael Kakuk, Helena, self  
Andy Skinner, Helena Property Owners Association  
Collin Bangs, Montana Association of Realtors  
Byron Roberts, Montana Builders Association  
Ronda Carpenter, Montana Housing Providers  
Joe Mueller, Helena, self  
Don Allen, WETA

**Opponents:** Tim Davis, Montana Smart Growth Coalition  
Bill Murdock, Gallatin County Commission  
Bob Horne, Great Falls, Montana Association of  
Realtors  
James Olsen, Hamilton, self  
Bill Arnold, Planning Department, Gallatin County  
Linda Stoll, Montana Association of Planners  
Julia Page, Park County, self  
REP. JOAN HURDLE, HD 13, Billings  
Richard Parks, Gardiner, self  
Beth Kaeding, self  
Mona Jamison, Gallatin County  
Janet Ellis, Montana Audubon  
Tom Schneider, Helena, self  
Anne Hedges, MEIC

**Opening Statement by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 1.7}***

**REP. ROY BROWN, HD 14, Billings,** stated HB 543 is an act revising laws related to the review of subdivisions for conformance to local growth policies. The preamble sets out the philosophical basis for the bill. Developers in Montana are increasingly frustrated by local government review and approval of subdivisions. This usually causes unpredictability and inconsistency in subdivision regulations. Many local governments try to use growth policies and master plans to regulate subdivisions. These plans should not be used as laws for substitutes for zoning.

**Proponents' Testimony:**

*{Tape : 1; Side : A; Approx. Time Counter : 3.7}*

**Peggy Trenk, Montana Association of Realtors**, submitted written testimony **EXHIBIT(nah41a01)** and a handout on growth policy **EXHIBIT(nah41a02)**.

**Michael Kakuk, Helena, self**, submitted written testimony **EXHIBIT(nah41a03)** and a handout on 76-1-601, MCA **EXHIBIT(nah41a04)**.

**Andy Skinner, Helena Property Owners Association**, stated there is a conflict in Lewis and Clark County's growth policy. A letter from the commissioners, in the document, says it is a reference document of fact, relationship and attitudes to help in the decision making process. It is a manual and a source of information to help the county to write it's own answers. It does not establish zoning or regulations to control development. When you go into the document, in policy 5.1 the statement is, "Prohibit construction activities within delineated wetlands." That means that any property established as wetlands cannot be developed. That is unconstitutional. He then read from the subdivision regulations for Lewis and Clark County. There is contradiction between the two documents. This bill will clear up the confusion. He asked for a do pass.

**Collin Bangs, Montana Association of Realtors**, submitted written testimony from Bryce E. Bondurant **EXHIBIT(nah41a05)**.

**Byron Roberts, Montana Builders Association**, stated, a growth policy or comprehensive plan is not a regulatory document. It is an advisory document. He asked for a do pass.

**Ronda Carpenter, Montana Housing Providers**, stated, a number of her members are attempting to develop affordable multi-family housing. She asked for a do pass.

**Opponents' Testimony:**

*{Tape : 1; Side : A; Approx. Time Counter : 23.2}*

**Tim Davis, Montana Smart Growth Coalition**, stated, good planing has many benefits. However, most of those benefits are not realized if the plan is not implemented. HB 543 seeks to insure that growth policies do not get implemented. It violates the trust that local residents place in their local planning process. Why would you create a growth policy if you weren't going to

control subdivisions? You wouldn't. If you can't guide growth in subdivisions with your growth policy then there is no purpose to having one. He offered an amendment, instead of exempting subdivisions from complying with a growth policy you should require the local government pass regulations and ordinances that implement their growth policies within two years of adopting the policy. He strongly opposes HB 543 without that amendment.

**Bill Murdock, Gallatin County Commissioner**, stated, Gallatin County likes growth policies. Having growth policies for subdivisions to conform with is good planning. It allows the communities to manage growth. It is an option to the communities that should not be taken away. He urged the committee to oppose the bill.

**Bob Horne, Planning Director, Great Falls**, submitted written testimony **EXHIBIT (nah41a06)**.

**James Olsen, Hamilton, self**, stated he agrees with private property rights and due process. The neighbors of subdivisions property rights are often violated. A plan, if adopted, needs to be implemented. There are good plans and bad plans. A good plan should be an enforcement document. HB 543 is about local control. It needs to be modified so that these counties with growth policies are protected. The state should not dictate what the local government can and cannot do.

**Bill Arnold, Planning Department, Gallatin County**, submitted written testimony **EXHIBIT (nah41a07)**.

**Linda Stoll, Montana Association of Planners**, stated, the Department of Commerce has indicated that there are currently no SB 97 compliance growth policies in effect. There are however a number of communities who are midway or towards the end in the process. SB 97 was approved by the legislature two years ago and the communities should be given an opportunity to use that legislation.

**Julia Page, Park County, self**, stated, she spent three years working on the Park County Comprehensive Plan and this bill is a slap in the face. The understanding was that the plan would help guide development in the county. A well planned development saves counties money in terms of having appropriately sized and placed infrastructure. She is strongly opposed to HB 543.

**REP. JOAN HURDLE, HD 13, Billings**, stated, this is one of the most hypocritical and cynical bills this session. The developers may be tired of being denied their subdivisions but the taxpayers

are tired of being denied their rights. Downtowns deteriorate in direct proportion to the amount of sprawl that is permitted.

**Questions from Committee Members and Responses:**

***{Tape : 1; Side : A; Approx. Time Counter : 46.7}***

**REP. HARRIS** asked **Mr. Murdock** what would this bill do to Gallatin County's plan? **Mr. Murdock** stated, this would be put to the vote of the people of Gallatin County. **REP. HARRIS** asked, so if this bill were to pass what would Gallatin County have to do? **Mr. Murdock** stated, if this happens there will not be a connection between subdivisions in the future in the growth policy. The people could vote on it but the county couldn't require a compliance. **REP. HARRIS** asked, then the vote would be a nullity because of this bill? **Mr. Murdock** stated yes.

**REP. ERICKSON** asked **Mr. Kakuk**, what his response would be to the county-wide zoning being politically impossible. **Mr. Kakuk** stated, county-wide zoning is one method of subdivision regulation. Some other ways are citizen initiated zoning or duly adopted subdivision regulations. Nothing in HB 543 changes any of those authorities to adopt subdivision regulations, citizen initiated zoning or county-wide zoning. **REP. ERICKSON** asked, regarding page 1304 in the growth policy law, is what you want to happen already in current law? **Mr. Kakuk** stated that is correct. He talked about an amendment that says that the subdivision regulations must be made in accordance with the growth policy if there is one. There is no disconnect that occurs between subdivision regulations and growth policies due to HB 543. It says, do not enforce a growth policy, implement it. **REP. ERICKSON** asked, regarding **Mr. Horne's** amendments, do you think that is a reasonable idea? **Mr. Kakuk** stated, this amendment would take it one step further and say that you have to adopt this as a regulation. That means that there is going to be some public participation in the process. It does not go far enough but it is an improvement. **REP. ERICKSON** asked, then do you agree that this would do what it is that the sponsor has asked for in the first place in terms of the sense of what needs to be done with growth management plans? **Mr. Kakuk** stated, no it doesn't. It's an improvement but now you have a subdivision regulation that doesn't preserve agriculture. Subdivisions are being denied based on language like it does not preserve agriculture. **REP. ERICKSON** asked, doesn't this amendment say they can't deny on the basis of the growth policy? They must be able to go ahead and get subdivision regulations and use them. Those subdivision regulations would have had to gone through a public hearing. Isn't that right? **Mr. Kakuk** stated, in his opinion that is not

what the amendment says. **REP. ERICKSON** asked **Mr. Kakuk** if he would be willing to sit down with **Mr. Horne** to work this out. **Mr. Kakuk** stated yes.

**Closing by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 57.2}***

**REP. BROWN** stated, most of the opponents actually made his point. They say that they can't do what they want to do through the growth plan or through zoning so they would like to use the growth plan to do that. That is how this problem came about. This bill favors implementation of the growth policy but it prohibits enforcement. Using growth policies to do zoning is not appropriate. The growth policy and zoning need to be looked at hand in hand, they are not separated in this. People who live in subdivisions are taxpayers and have a problem when they have due process and equal protection problems. He passed out a proposed conceptual amendment **EXHIBIT(nah41a08)**. Planning and zoning is very important. When local governments try to zone by using a plan they do so at the expense of citizen's rights. He asked for a do pass.

**HEARING ON HB 572, HB 573 & HJ 27**

**Sponsor:** **REP. KEITH BALES, HD 1, Otter**

**Proponents:**

**HB 572**

**Sarah Carlson, Montana Association of Conservation Districts**

**Mike Murphy, MWRA**

**Rebecca W. Watson, Redstone Gas**

**Lorna Karn, Montana Farm Bureau**

**Willie Duffield, Montana Association of Oil, Gas & Coal  
Counties**

**Don McDowell, Powder River Co.**

**Jim Mockler, Montana Coal Council**

**Carol Lambert, Women Involved In Farm Economics (WIFE)**

**Tom Daubert, Montana Association of Oil, Gas & Coal Counties**

**John Bloomquist, Montana Stockgrowers**

**Patrick M. Montalban, Northern Montana Oil and Gas  
Association (NMOGA)**

**Gail Abercrombie, Montana Petroleum Association**

**John Tubbs, DNRC**

**Don Allen, WETA**

**Tom Ebzery, CMS Energy**

HB 573

Mike Murphy, MWRA  
Lorna Karn, Montana Farm Bureau  
Willie Duffield, Montana Association of Oil, Gas & Coal  
Counties  
Don McDowell, Powder River Co.  
Jim Mockler, Montana Coal Council  
Carol Lambert, WIFE  
Tom Daubert, Montana Association of Oil, Gas & Coal Counties  
Patrick M. Montalban, NMOGA  
Gail Abercrombie, Montana Petroleum Association  
Don Allen, WETA  
Jeff Barber, MWF  
Tom Ebzery, CMS Energy

HJ 27

Julia Page, NPRC  
Gail Abercrombie, Montana Petroleum Association  
Rebecca Watson, Redstone Gas  
Lorna Karn, Montana Farm Bureau  
Don Allen, WETA  
Carol Lambert, WIFE  
Tom Daubert, Montana Association of Oil, Gas & Coal Counties  
John Bloomquist, Montana Stockgrowers  
Patrick Montalban, NMOGA  
Tom Ebzery, CMS Energy

Opponents:

HB 572

Roger Maggli, T & Y Irrigation  
Patrick Judge, MEIC  
Wade Sikorski, Willand, self  
Janet Ellis, Montana Audubon  
Tom Schneider, Helena, self  
Jeff Barber, MWF  
Beth Kaeding, Bozeman, self  
Jennifer Read, Bozeman, self  
Kim McRae, self  
Sue Neiman, Colstrip, self  
Richard Parks, Gardiner, self  
Julia Page, NPRC  
Dorothy Gallagher, Columbus, self  
Natalie Alderson, Bones Bros Ranch  
Arleen Boyd, Stillwater Protective Association

Steve Gilbert, Helena, self  
Nancy Carrel, FL Ranch  
Phil Wood, Webster Ranch  
Art Hayes Jr., Tongue River Water Users (TRWU)  
Roger Lovely, Miles City, self

HB 573

Roger Maggali, T & Y Irrigation  
Patrick Judge, MEIC  
Wade Sikorski, Willand, self  
Tom Schneider, Helena, self  
Beth Kaeding, Bozeman, self  
Jennifer Read, Bozeman, self  
Kim McRae, self  
Sue Neiman, Colstrip, self  
Richard Parks, Gardiner, self  
Julia Page, NPRC  
Dorothy Gallagher, Columbus, self  
Natalie Alderson, Bones Bros Ranch  
Arleen Boyd, Stillwater Protective Association  
Steve Gilbert, Helena, self  
Nancy Carrel, FL Ranch  
Phil Wood, Webster Ranch  
Art Hayes Jr., TRWU  
Margery Rossiter, Fishtail, self  
Roger Lovely, Miles City, self  
Jack Tuholske, NPRC  
Jim Olsen, Hamilton, self

HJ 27

None.

Opening Statement by Sponsor:

*{Tape : 1; Side : B; Approx. Time Counter : 1}*

REP. KEITH BALES, HD 1, Otter, handed out a booklet to go along with his testimony **EXHIBIT**(nah41a09). He stated, Montana is towards the bottom of the heap in income, jobs, etc. He gave a history of the area he represents which is where coal bed methane is located. His family has owned a ranch in that area for many years. He referred to page 1 of his handout which has to do with the 1970's coal boom. In the early 1970's MEPA was passed and in the mid 1970's the Northern Plains Resource Council was formed. The council lobbied the legislature and because of that a



severance tax of 30% was put on coal. The strip mine reclamation act and the major facility siting act were also put in place. At the same time Wyoming passed a severance tax of 15% and a much less stringent strip mine reclamation act. Page 2 and page 3 show the results of those laws. Wyoming has been booming while Montana has been hurting. Between 1990 and 1999 Wyoming's population and per capita income has been dramatically increasing. That is a result of the coal bed methane development happening in Wyoming today. He stated, a lot of the young people in Montana have gone to Wyoming to find jobs. He pointed out pages 4 - 6 as they talk about the effect on Wyoming from coal bed methane. He referenced the highlighted portion of page 7 which is a statement from one of his constituents. The Powder River Basin Resource Council in Wyoming has tried to stop the development of coal bed methane. Page 8 references a petition by the people of Northeastern Wyoming in support of continued coal bed methane development. One reason why Wyoming is producing coal bed methane gas today and Montana is not is that Wyoming does not have a state environmental protection act. The area that will be affected is on page 9. He stated that the circle on the map is about where his ranch is. He also stated, "As you can see, I am right in the middle of it." He then went over the map. Page 10 is the proposed drilling schedule for 2001 - 2010. That may be pushed back a year because we are currently in the process of an EIS statement being done. Some permits were requested in the fall of 1999 and the winter of 2000 which were all set aside because Northern Plains Resource Council filed suit on March 16, 2000 and got an injunction against any further development. The EIS will not be completed until March of 2002. Page 11 is a graph of what the well activity is figured to be and the production rate for all of the lands and all of the different minerals. Page 12 is the production forecast for a typical well. Page 13 gives the anticipated revenue stream that can be expected from each of these wells. On the second line of page 13 the net price is \$1.80 per MCF. The price currently is \$3.60 or more so these figures can be doubled. Page 14 is the anticipated revenue stream from royalty for all of the different mineral interests within the state. Page 15 is the anticipated production tax distribution. There are no wells on the Custer National Forest or on either one of the Indian Reservations listed on page 15. There are other areas which have not even been considered at this point. Page 16 is the problem of drainage. **REP. BALES** then addressed each bill separately.

**HB 573** - **REP. BALES** stated, this bill tries to address the problem of drainage. We do not want the gas drained out from underneath our state lands to the detriment of our school children. We do not want the gas drained out from the private mineral owners to the detriment of the state. Section 3 of the bill says if there is methane production in an unpermitted area

or uncontrolled area by the Board of Oil and Gas, within one mile, that the Board is authorized to issue drilling permits so there will not be gas drainage such is happening in Wyoming. He referred to the map on page 9, Exhibit 9, stating, this summer there will be several wells drilled in Wyoming within a mile of the blue sections along the state line. Even after the EIS is completed there may be appeals on the process on several grounds. The EIS may be appealed to the Montana Supreme Court on a clean and healthful environment premise. If that happens there is a very good possibility that the BLM will be able to go ahead with their permitting and the state of Montana will not be able to permit on state or private lands. Therefore you could have a drainage problem throughout the state. This bill will help protect the state and private lands. Section 4 deals with the issues having to do with water. He passed out a Final Order **EXHIBIT(nah41a10)**, a document **EXHIBIT(nah41a11)** and a booklet **EXHIBIT(nah41a12)**, regarding controlled groundwater. He also passed out an amendment **EXHIBIT(nah41a13)** and explained it.

**HB 572 - REP. BALES** handed out the fiscal note for HB 572 **EXHIBIT(nah41a14)** which he had just received. HB 572 is designed to be an insurance policy for any unforeseen water problems that may arise. The methane companies are held responsible but if there are unforeseen problems that cannot be attributed to a methane company or if the methane company has disappeared this will set up a fund from which the land owners or water right holders can get grants. It will be handled by the local conservation districts and be funded by diverting \$400,000 per year out of the monies that would normally go to the RIT fund, after that fund is capped at \$100,000,000. The fiscal note is wrong where it states there will be \$800,000. The conservation districts could recoup their costs from this fund.

**HJ 27 - REP. BALES** stated, HJ 27 authorizes the EQC to monitor the EIS with the purpose of insuring that the coal bed natural gas environmental review process under MEPA is timely, efficient, informed and cost effective and that it results in a legally defensible decision.

**REP. BALES** handed out two letters, from his constituents, supporting the bills **EXHIBIT(nah41a15)** and **EXHIBIT(nah41a16)**.

**Proponents' Testimony:**

**{Tape : 1; Side : B; Approx. Time Counter : 28.6}**

**Carol Lambert, WIFE**, stated, WIFE believes in the orderly and wise use of our natural resources. It is through these natural resources that new growth is made in Montana. Coal bed methane

development will give the state a tremendous amount of money. HB 572 and HJ 27 protect the rights of the private property owners and the rights of the state. She urged a do pass of all three bills.

**Gail Abercrombie, Montana Petroleum Association,** urged a do pass on all three of the bills.

**Tom Ebzery, CMS Energy,** stated, HJ 27 is a good idea which makes good sense. HB 572 makes a conceptual assumption that damage will occur. He made some suggestions on the definition of a coal bed methane operator or developer. Page 2, section 4, is fairly broad and may need more strict parameters. In HB 573 he has a concern about section 4, page 2, and the priorities that have been established. He urged that the committee look at whether a priority list should be put in place prior to the EIS. He suggested lines 16 - 22 be deleted or amended. He urged the committee to move the bills along.

**Rebecca W. Watson, Redstone Gas,** stated, **REP. BALES** has a deep concern for his constituents and their economic situation which has declined drastically. Redstone supports HJ 27 as it provides another opportunity to take a look at the MEPA process and how it works. It is a good case study. Redstone also supports HB 572 as a good insurance policy. Regarding HB 573, Redstone neither supports or opposes the bill. It comes out of a concern for the state lands and the constituents in HD 1.

**Sarah Carlson, Montana Association of Conservation Districts,** stated, regarding HB 572, the conservation districts support the bill. She stated that she will work with the sponsor to get an amendment for compensation for the conservation districts' time.

**Don McDowell, Powder River Co.,** stated, one of the huge questions of methane production is the water. HB 572 would help to ease the serious concerns of the water users in the impacted areas. This step is one of many that must take place for methane production to become a reality of Montana. He asked for support of HB 572 as it is a step in the right direction. HB 573 protects the private mineral holders in the Powder River along with state mineral holdings. It protects agriculture in many ways. He asked for a do pass on HB 573.

**John Bloomquist, Montana Stockgrowers,** stated, one of the critical issues with coal bed methane development is groundwater and water development effects. HB 572 represents something that has been lacking in the whole coal bed methane program. It addresses a hole that could exist if the developers are gone and the rancher or water right holder is there without any recourse.

HJ 27 is a good thing for EQC to take on and watch a MEPA process in action. There is a time limitation within the resolution that has nothing to do with the EIS process. He strongly urged the committee to pass HB 572 and HJ 27. Regarding HB 573, the scope is limited. There is mineral drainage going on right now on state lands and probably on private lands.

**Don Allen, WETA,** stated, WETA supports the bills particularly HJ 27. These are some positive answers to economic development.

**Lorna Karn, Montana Farm Bureau,** stated, MFB is in support of all three bills. Regarding HB 573, MFB originally came up with policy that supported and opposed the bill but are in stronger support than opposition.

**Patrick M. Montalban, NMOGA,** stated, Northern Montana doesn't have any coal bed methane but NMOGA supports all three of the bills. These bills will create more jobs and tax dollars. This is a clear answer to many problems of trying to create good paying jobs in the state. The oil and gas industry has been shut down every time it has an opportunity to contribute to the economy of Montana. Regarding HB 573, the correlative rights of the individual land owners and the state are very important on the southern border of the state. They have the right to produce this mineral out of the ground because they have ownership of the minerals. He gave some examples in Northern Montana where adjoining states have taken minerals that are rightfully ours. There is state land acreage right on the lease boundaries of Wyoming and those leases are not being protected. It is time to protect our minerals in our state. It is a good time for the environmentalists and industry to compromise on this issue. He supports the bills for the jobs, the taxes and the kids of Montana.

**Jim Mockler, Montana Coal Council,** asked for a do pass of the bills.

**John Tubbs, DNRC,** stated, he supports HB 572. It is a use of RIT taxes for emergency purposes. It is within the purpose of the tax to set aside an amount of money to protect against unforeseen consequences in the future. This bill is not to take away from the liability of developing the wells. He asked for a do pass.

**Tom Daubert, Montana Association of Oil, Gas & Coal Counties,** stated his association supports all three of the bills.

**Mike Murphy, MWRA,** stated he supports the legislation.

**Opponents' Testimony:**

**{Tape : 1; Side : B; Approx. Time Counter : 58.8}**

**Julia Page, NPRC,** stated, NPRC is not opposed to coal bed methane development but feels that we have to know and understand what the environmental impacts are going to be. NPRC is very strongly opposed to HB 573 because it appears it will circumvent the EIS process that is going on. NPRC supports HJ 27, however, she suggested an amendment. NPRC has some concerns with HB 572 as it might send the wrong message. The bill would need a statement that affirmatively obligates a coal bed methane company to compensate landowners for damages to land and water rights.

**{Tape : 2; Side : A; Approx. Time Counter : 0.1}**

**Jack Tuholske, NPRC,** submitted written testimony **EXHIBIT(nah41a17)**, a Settlement agreement **EXHIBIT(nah41a18)** and a excerpt from the Montana Constitution **EXHIBIT(nah41a19)**.

**Art Hayes Jr., TRWU,** stated, he is opposed to HB 573 and has serious reservations about HB 572. HB 572 is a start of working toward compensation for losses. One would wonder why we have to have this. Wouldn't it be much easier to make sure that the water does not get into irrigating streams? HB 573 says that you must put this water to beneficial use, you can't irrigate with it. He handed out a document **EXHIBIT(nah41a20)**. He stated, the EIS process must go forward. He is not opposed to coal bed methane but we have one chance to do it and we better do it right.

**Beth Kaeding, Bozeman, self,** stated, there are pending coal bed methane permits in Bozeman. She is not against coal bed methane development but believe there are a lot of unknowns. It is vitally important to Montana to wait until the EIS is completed before more wells are permitted. She asked the committee to table HB 573.

**Jennifer Read, Bozeman, self,** stated HB 573 does not serve the interest of Montanans. Coal bed methane has caused stock ponds and ranchers' wells to go dry in Wyoming. We must complete the EIS before drilling begins for Montana's protection. We must not rush into the exploitation of our valuable resources. She asked the committee to table the bill.

**Nancy Carrel, FL Ranch,** stated she is strongly opposed to HB 573. We are depending on the moratorium and EIS to look at the ways that coal bed methane development would affect Montana's ranches. It is a very bad idea to permit wells before the EIS is completed. Overwhelming evidence points to the adverse effects that coal bed methane drilling has upon the water supply. She

gave a history of her ranch. HB 573 infringes on property and irrigation rights. It negatively impacts the existing economy. She asked for a do not pass.

**Kim McRae, self,** stated she is not opposed to economic development but she is opposed to HB 572 and HB 573. The EIS should be finished and the moratorium left in place until then. These bills change the rules in the middle of the game and upsets the EIS process. The bills have serious flaws. The legislature should not break this contract. She asked the committee to table the bills.

**Sue Neiman, Colstrip, self,** stated she is opposed to HB 572 and HB 573. There are too many unknown variables about the coal bed methane industry. The EIS needs to be done. She is not opposed to economic development but it needs to be done right.

**Dorothy Gallagher, Columbus, self,** stated she is opposed to HB 572 and HB 573. One bill assumes there will be environmental problems and the other proposes to ignore them. Ranchers depend on good quality groundwater for their economic survival.

**Margery Rossiter, Fishtail, self,** stated she is opposed to HB 573. The bill is bad because it requires that wells be permitted before the EIS is done. She asked for a do not pass.

**Arleen Boyd, Stillwater Protective Association,** HB 573 requires the Board of Oil and Gas to break it's agreement with the Northern Plains Resource Council and change the EIS process midstream. She asked for a do not pass.

**Roger Lovely, Miles City, self,** stated he is opposed to HB 572 and HB 573. He gave an example of what this may do to Montana.

**Phil Wood, Webster Ranch,** stated he is opposed to HB 573.

**Natalie Alderson, Bones Bros Ranch,** stated she is opposed to HB 573. She stated, "Please don't let short-term gains, for a few individuals and companies, preclude the long-term benefits that come from a rigorous analysis, before any more action is taken." She asked for a do not pass.

**Wade Sikorski, Willand, self,** stated, this is the wrong way to go about fixing the economic problems in Southeastern Montana. He talked about the possible impacts on his ranch.

**Tom Schneider, Helena, self,** stated, there is a significant environmental threat and risk in coal bed methane development.

We have a chance to do it right and should. He talked about correlative rights. He asked for a do not pass.

**Informational Testimony:**

***{Tape : 2; Side : A; Approx. Time Counter : 31.6}***

**Holly Franz, Water Rights Attorney**, submitted written testimony **EXHIBIT**(nah41a21).

**Questions from Committee Members and Responses:**

***{Tape : 2; Side : A; Approx. Time Counter : 32.2}***

**REP. YOUNKIN** asked **Ms. Watson**, regarding the Stipulation and Settlement agreement, is there an ex post facto problem? **Ms. Watson** stated, if there was why wasn't it brought up by legislative services' legal review of this legislation. **REP. YOUNKIN** asked, do you think that HB 573, as drafted, would supercede and circumvent the moratorium that is in place? **Ms. Watson** stated, there are two exceptions in the moratorium agreement. One is the ability to drill 325 wells, 200 of which can be producing wells, that applies to Redstone. Then there is an ability to drill some additional wells that can apply to any other commerce. To a certain extent HB 573 does go beyond the moratorium and that is why Redstone neither supports or opposes it. HB 573 seeks to lift that moratorium in the instance where drainage is occurring to private and state properties. That type of drainage protection was not contemplated in the settlement.

**REP. YOUNKIN** asked **Mr. Tuholske** to respond to the above questions. **Mr. Tuholske** stated, the concern with HB 573 is in section 3. If this passes and a company goes out and drills 1,000 new wells the Board has to give them permits. That directly conflicts with the settlement agreement entered into between NPRC and the Board of Oil and Gas. The reason why HB 573 sets up an ex post facto problem is because it conflicts with the constitution. This is a contract between two parties, approved by the court. This bill breaks the terms of that contract and that is the root of the ex post facto problem. **REP. YOUNKIN** asked, do you think that there is any way a savings clause could be drafted into this bill or does that undo what the bill is trying to do? **Mr. Tuholske** stated, that would undo what the bill is trying to do. **REP. YOUNKIN** asked, do you think that HB 572 would have some merit, by itself, in light of what is allowed

under the moratorium? **Mr. Tuholske** stated he did not review the bill so could not speak on it. **REP. YOUNKIN** asked what the schedule is on the EIS. **Mr. Tuholske** stated, the draft should be completed in September of 2001.

**REP. HARRIS** asked **REP. BALES**, was it your intention in HB 573 to nullify the moratorium? **REP. BALES** stated, the intent of HB 573 is two-fold. If the EIS process goes forward for a much longer time than was anticipated we are in a very serious danger of having a drainage of our state and private lands. HB 573 would come into effect more importantly is at the end of the EIS period. After the EIS is done in March there could be full force development on federal lands and yet we couldn't develop on state and private lands. He stated his concern, more than anything else, is the economic advantage Montana may have from coal bed methane. There would probably only be a handful of wells requested between now and March anyway. This is a protection for the future. **REP. HARRIS** asked was the ex post facto issue raised at the time this bill was drafted? **REP. BALES** stated no. He stated that he asked Mr. Petesch if the legislature can go on with this with the agreement in place and he stated yes.

**REP. MOOD** asked **REP. BALES**, regarding section 4 in HB 573, if it was his intent to require that water to be used as stock water. **REP. BALES** stated his amendment would change that somewhat. The intent of that is to make this a win/win situation. If this is handled properly the methane companies will put in a water distribution pipeline, better than any rancher could afford, to utilize for livestock. There is technology that will allow for purification of the water in order to make it suitable for irrigation. **REP. MOOD** asked is it correct that the value of one mill in your county has gone from \$78,000 to \$4,400? **REP. BALES** stated yes. Bell Creek Oil Field has been closed down in the county which caused the decline.

**REP. EGGERS** asked **REP. BALES**, regarding the Stipulation, new section 3 of HB 573 states, "The board is authorized and directed to issue permits that will offset permitting by federal agencies and tribes." That permitting process that is being proposed in HB 573 appears to be an unlimited permitting. It isn't exclusive with regard to any particular company, would you agree? **REP. BALES** stated, it's limited in the fact that it says, "to offset (drainage)." **REP. EGGERS** stated, his question is not directed to the offsetting element, it is directed to the permitting aspect. The permitting, as proposed, appears to be a general permitting that any developer of coal bed methane could presumably apply for a permit, correct? **REP. BALES** stated, anybody that falls under that could ask for a permit. **REP. EGGERS** asked, in the Stipulation, page 4, paragraph 4 B., suggests, in the opening



sentence, that only Redstone is entitled to expand upon it's drilling in CX Field Pilot Project and no other company. Is that how you read it? **REP. BALES** stated, that deals strictly with Redstone. There are some other wells that are authorized to be drilled under this agreement. This goes back to the question as to whether or not there is an ex post facto problem. Legislative legal council, Mr. Petesch, did not think there was a legal problem. **REP. EGGERS** asked, in the Stipulation, page 3, subparagraph 5, it looks like if there is going to be any expansion of any permits for exploration, production and development, those may be limited exclusively to Redstone, is that your impression? **REP. BALES** stated he does not believe so. Legislation passed can affect this agreement. **REP. EGGERS** asked, are you suggesting that it would be a good idea to pass this legislation because it acts as a prospective measure for what could or should happen when the EIS is completed? **REP. BALES** stated, depending on how fast the EIS process is completed, this will probably have very little effect. The main point of this bill is to set up that any exploration has to be in a controlled groundwater area which gives rights to the water right holders and the private landowners and it would set up a priority of use that would benefit agriculture. **REP. EGGERS** asked **REP. BALES** to respond to his concern that this bill forces the Montana Board of Oil and Gas Conservation into a court posture where they would be in direct violation of this Stipulation and Agreement. **REP. BALES** stated he is not an attorney and cannot respond to that. **REP. EGGERS** asked, regarding HB 572, are there any standards in the bill that imposes standards on coal bed methane development? **REP. BALES** stated, there are various things that restrict and direct the development. The Board of Oil and Gas has the authority to say what spacing coal bed methane wells can be developed. They hold hearings on that spacing. These controlled groundwater areas must be monitored to determine if there are impacts to surrounding water users. If there are impacts they have to mitigate them. Regarding discharge, a permit has to be issued by DEQ to discharge any of the water. The base safety net is in place and done by different entities. **REP. EGGERS** asked, regarding page 2, section 5, lines 11 and 12, of HB 572, would you respond to the opponents suggestion that this is a safety net for careless or irresponsible developers. **REP. BALES** stated, page 2, number 5, covers that issue. He stated, in no way does he want to relieve them of any liability. This is an insurance policy just in case something happens.

**REP. ERICKSON** asked **Mr. Tubbs** why can't we do some anticipating in the bonding and make sure that the companies will be adequately bonded. **Mr. Tubbs** stated, we hope that to be the case. The EIS effort is focusing on that very question.

*{Tape : 2; Side : B; Approx. Time Counter : 0.1}*

**REP. ERICKSON** asked **REP. BALES** wouldn't you agree that with the life span of these wells we are heading for a boom/bust situation? **REP. BALES** stated, to a certain extent yes. In Wyoming they projected the well life at ten years and they do have wells going longer than that. **REP. ERICKSON** asked, why not put aside some of the money that will be going into the general fund from coal bed methane into a fund for the concerns about boom/bust? **REP. BALES** stated, HB 226 does kind of do that. **REP. ERICKSON** stated he would be pleased to look at HB 226. It would be feasible to use a "coal trust type" situation with very specific benefits for the people who are going to be affected.

**REP. HARRIS** asked **Mr. Ebzery** to address the ex post facto situation. **Mr. Ebzery** stated that Mr. Petesch did look at this issue and he said the legislature can do what it wants within certain parameters. He stated that he is concerned with it and will look at language to fix any problems. **REP. HARRIS** asked, regarding section 3 of HB 573, there is no actual reference to exclude MEPA or the EIS requirements, one way of reading it is that it is subject to existing law. Do you have a different interpretation of that? **Mr. Ebzery** stated, the language is fairly specific. It mandates the Board to permit if the application is subject to the regulatory requirements. There is no reference to any prior moratorium. **REP. HARRIS** asked, why are we assuming that we can dispense with MEPA as a result of the language here? **Mr. Ebzery** stated that he couldn't answer that as he didn't draft the bill.

**REP. STORY** asked **Mr. Tuholske**, where does it say in the agreement that the board has the authority to do some of the initial agreement? **Mr. Tuholske** stated, page 3, paragraph 6. **REP. STORY** asked does it allow the board to pump the wells for production? **Mr. Tuholske** stated no. The intent of this is to let them explore and develop for information gathering but not put into production the additional 200 wells. **REP. STORY** asked, if they can punch the hole and do the exploration but can't produce the wells, how does that help the people who are getting the gas drained out from under them? **Mr. Tuholske** stated, it will not allow those 200 wells to go into coal promotion production. **REP. STORY** asked, how difficult is it to set up these controlled groundwater areas? **Mr. Tuholske** stated, the controlled groundwater area that is in place is huge. He stated that he thinks it can be done over a period of months.

**REP. STORY** asked **REP. BALES**, is there anything similar to the agreement regarding the requirement of the driller to set up a

mitigation agreement with the landowner in this bill? **REP. BALES** stated no. After much research it was decided that the landowners were probably better off without that in statute. He gave an example from the coal boom in the 1970's. **REP. STORY** stated, one of the purposes of this bill is to prevent drainage from under certain properties. While that helps those particular properties that are within a mile of Wyoming or federal land, doesn't that just move the problem a mile up the road for the person on the other side? **REP. BALES** stated, it will not move the problem up unless the federal government goes to developing their minerals. **REP. STORY** asked **REP. BALES** if he handed out the Final Order on the groundwater area. **REP. BALES** stated yes.

**REP. STORY** asked **Ms. Abercrombie** when the board sets up the spacing rules what happens if you have property that you can't put a well on because you are spaced out? **Ms. Abercrombie** stated, the board holds hearings and notifies all adjacent mineral holders within a certain area. The board will stipulate where a well will be located in a spacing unit so as not to drain another mineral right. If one well is presumed to drain another area it gets unitized and a percentage is given to that adjacent mineral right holder.

**REP. MOOD** asked **Mr. Bloomquist** to shed some light on the ex post facto problems. **Mr. Bloomquist** stated, the narrowness of the application of the law is in terms of where it will go into effect in addressing two other issues, the drainage of private mineral as well as state mineral. There are provisions for those rights in the state constitution and MEPA. MEPA is supplementary to other laws and is not to be construed to preclude ongoing programs of state government. When you add all of those things up there isn't an ex post facto problem.

**REP. GUTSCHE** asked **Mr. Schneider**, regarding HB 573, section 4, is this management of the water feasible? **Mr. Schneider** stated, it is dangerous to establish the priorities in law when you have an EIS that will answer these questions. The preferred alternative is re-injection. **REP. GUTSCHE** asked, with the large amount of water at hand, how much would a rancher use for stock water? **Mr. Schneider** stated, one well is talking about 500 oil field barrels of water per day. The order of magnitude is out of kilter.

**REP. YOUNKIN** stated, a standard stock water right by the DNRC is 30 gallons per day, per animal unit.

**Closing by Sponsor:**

**{Tape : 2; Side : B; Approx. Time Counter : 22.2}**

**REP. BALES** stated, this is a very controversial issue with people on both sides. In the area where he is from there are people on both sides of the issue. This will provide an economic benefit to Southeastern Montana. He gave an example of the mill levels in different counties. Some of the wells in Bozeman came under the court agreement that was hammered out by NPRC. The controlled groundwater area helps to relieve a lot of the problems and concerns. The agreement that is out there, those additional wells that are to be permitted will not allow any production, are not going forward very rapidly. There are not many companies that are willing to go out and drill a well and not be able to produce it. One of the things that was looked at originally was to have a pilot project to gather information. Much of the water in this area has already been examined by the BLM in the 1970's. Therefore, there is very good data on that water already. That is one of the reasons he didn't go forward with the pilot project. HB 573 is important to protect the School Trust. This state and the people in it have a fiduciary responsibility that the School Trust not be diminished. If we allow drainage of the natural gas from under the land we are not upholding the Trust. We also have a duty to protect the private mineral holders and private property rights in Montana. HB 573 will do that now and into the future. The amendment will put agriculture first. The reason for the amendment is because that is a water scarce area and that water should be put to beneficial use rather than have it injected 10,000 feet into the ground where we will never see it again. The amendment will put other uses for the water on an even par. The water cannot be used for irrigation unless it is put through a treatment plant. Water management is the key to the development of coal bed methane. HB 572 is an insurance policy. It may not be enough but as this develops the money and grants can be added to. HJ 27 is to let the EQC view the process and try and see that it goes forward in an orderly and expeditious fashion. He asked for a do pass.

#### **HEARING ON HB 586**

**Sponsor:** REP. DAVE WANZENRIED, HD 68, Missoula

**Proponents:** Peggy Trenk, Montana Association of Realtors  
Tim Davis, Montana Smart Growth Coalition  
Bob Horne, MAP  
Mona Jamison, Gallatin County  
Jane Jelinski, MACo  
Mike Pichette, Montana Power  
Patrick Asry, Montana Power  
Anne Hedges, MEIC

**Opponents:** None.

**Opening Statement by Sponsor:**

*{Tape : 2; Side : B; Approx. Time Counter : 30.4}*

REP. DAVE WANZENRIED, HD 68, Missoula, submitted written testimony **EXHIBIT**(nah41a22).

**Proponents' Testimony:**

*{Tape : 2; Side : B; Approx. Time Counter : 32.5}*

Jane Jelinski, MACo, stated this bill clarifies and simplifies what a minor subdivision is and how it is reviewed. She passed out a technical amendment **EXHIBIT**(nah41a23). She asked for a do pass.

Peggy Trenk, Montana Association of Realtors, stated the association supports the bill and the amendment. She asked for a do pass.

Bob Horne, MAP, stated the association supports the bill.

Mona Jamison, Gallatin County, stated Gallatin County stands in support of the bill as amended. It is important that people be able to look at all of the statutes together on how a minor subdivision review works. This bill makes the statutes user friendly. She asked for a do pass.

Mike Pichette, Montana Power, passed out an amendment **EXHIBIT**(nah41a24).

Patrick Asry, Montana Power, explained the amendment.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

*{Tape : 2; Side : B; Approx. Time Counter : 38.4}*

REP. STORY asked REP. WANZENRIED, does this proposed change have any effect on the exclusions? REP. WANZENRIED stated that he does not believe so.

**Closing by Sponsor:**

*{Tape : 2; Side : B; Approx. Time Counter : 39.1}*

REP. WANZENRIED stated, any time you can bring together such a diverse group as the proponents it certainly deserves endorsement. He asked for a do pass on the bill and the amendments.

**EXECUTIVE ACTION ON HB 586**

*{Tape : 2; Side : B; Approx. Time Counter : 39.6}*

**Motion:** REP. WANZENRIED moved that HB 586 DO PASS.

**Motion/Vote:** REP. WANZENRIED moved that AMENDMENT HB058601.ate BE ADOPTED. Motion carried unanimously.

**Motion:** REP. WANZENRIED moved that AMENDMENT HB058601.agp BE ADOPTED.

**Discussion:**

REP. ERICKSON asked for a better explanation of the amendment.

Patrick Asry, Montana Power, explained the amendment.

REP. ERICKSON asked, would a reasonable basis be a prorated basis? Mr. Asry stated yes.

**Vote:** Motion that AMENDMENT HB58601.agp BE ADOPTED carried unanimously.

**Motion/Vote:** REP. WANZENRIED moved that HB 586 DO PASS AS AMENDED(2). Motion carried unanimously.

**EXECUTIVE ACTION ON HB 543**

*{Tape : 2; Side : B; Approx. Time Counter : 42.5}*

**Motion:** REP. DALE moved that HB 543 DO PASS.

**Motion:** REP. ERICKSON moved that AMENDMENT BY ROBERT HORNE BE ADOPTED.

**Discussion:**

REP. ERICKSON explained the amendment. He made some changes to the amendment also. He stated that the idea behind the bill is a good one. The amendments assure that the cities, counties and

subdividers do their work and get subdivision regulations that tie to the growth policy.

**REP. STORY** discussed 76-1-601, page 1, line f, which talks about implementation strategy. He stated that he does not think **REP. ERICKSON** has the best terminology in his amendment.

**REP. ERICKSON** stated that he is not sure that "actions" is the right word. He is concerned about page 1304 of 76-1-605 that the board is supposed to guide and give consideration to things like adoption of subdivision controls. If act is the wrong word a better word should be used.

**REP. MOOD** asked **REP. ERICKSON** to go over the change in the 76-1-606. **REP. ERICKSON** went over the language.

**REP. YOUNKIN** stated, rather than saying "actions and policies" it should say "goals and objectives" because that language is in 76-1-601(2)(a).

**REP. ERICKSON** stated those are good words.

**REP. STORY** stated that he agrees that the amendment clarifies a lot of problems. He gave an example in Sweet Grass County. The concern he has with the amendment is that it reverses about half of the intent of the bill. It may not be permissible under the title of the bill.

**Mr. Mitchell** stated, the first sentence of the title is fairly generic. The amendment does bring some question to the title. It would probably be ok to pass the amendment.

**REP. STORY** stated, the bill may need another person to carry it when it hits the floor.

**REP. DALE** stated he opposes the amendment on the basis that it makes the bill useless. He gave an example.

**REP. CLANCY** stated that by adding the section back in totally defeats the purpose of the bill and reverses it's intent.

**REP. HURDLE** asked, does that mean you are not serious about meeting regulations?

**REP. YOUNKIN** stated she missed the point of that comment.

**REP. ERICKSON** stated, this amendment meets the intent of all the testimony on the bill. The testimony had to do with plans not

being used for the decision rather that regulations should be used. This amendment meets the original intent of the bill although it does it in a different way.

**Vote:** Motion that **AMENDMENT BY ROBERT HORNE BE ADOPTED** failed 10-10 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Story, Tramelli, Wanzenried, and Younkin voting aye.

**REP. GUTSCHE** stated that the fifth Whereas in the bill is not accurate. The bill is going the wrong way and she does not support it.

**Vote:** Motion that **HB 543 DO PASS** failed 10-10 with Bitney, Brown, Clancy, Curtiss, Dale, Holden, Laible, Laszloffy, Mood, and Younkin voting aye.

**REP. HURDLE** asked the vice-chairmen to examine the proxies.

**Motion/Vote:** **REP. ERICKSON** moved that **HB 543 BE TABLED**. Motion failed 10-10 with Bales, Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Story, Tramelli, and Wanzenried voting aye.

**Motion:** **REP. YOUNKIN** moved that **REP. ERICKSON'S PREVIOUS AMENDMENTS BE ADOPTED**.

**Discussion:**

**REP. YOUNKIN** stated, if you are going to enforce a growth policy it has to be in the law, not in the policy. That means that the county would have to pass an ordinance in their subdivision regulations to enforce whatever they need to enforce in the growth policy. If a growth policy is going to be implemented you have to have to subdivision regulations in order to do that. She likes the amendments.

*{Tape : 3; Side : A; Approx. Time Counter : 0.1}*

**Vote:** Motion that **REP. ERICKSON'S AMENDMENT BE ADOPTED** carried 14-6 with Bitney, Brown, Clancy, Curtiss, Dale, and Laszloffy voting no.

**Motion/Vote:** **REP. WANZENRIED** moved that **HB 543 DO PASS AS AMENDED**. Motion carried 19-1 with Gutsche voting no.

**EXECUTIVE ACTION ON HB 459**

*{Tape : 3; Side : A; Approx. Time Counter : 1.9}*



**Motion:** REP. MOOD moved that **HB 459 DO PASS.**

**Motion:** REP. MOOD moved that **AMENDMENT HB045901.ate BE ADOPTED.**

**Discussion:**

REP. MOOD passed out the amendments **EXHIBIT(nah41a25).**

REP. ERICKSON asked if there is a Fiscal Note on this bill. REP. MOOD stated no.

REP. WANZENRIED asked if there is any reason to take action on the bill since there can't be a second reading without a Fiscal Note.

REP. YOUNKIN stated that second reading does not have to be done until Thursday and there should be a Fiscal Note by then.

REP. GUTSCHE asked REP. MOOD if he requested a Fiscal Note. REP. MOOD stated that he did ask for a Fiscal Note but he hasn't seen one yet. He stated that he would check into it first thing Tuesday morning and make it available for second reading.

REP. GUTSCHE recommended that the committee postpone working on the bill until they have a Fiscal Note

REP. YOUNKIN stated there is no time to postpone, this is the last day... REP. GUTSCHE stated, the committee will have to come back early and she didn't think the bill should be passed out of committee without a Fiscal Note as it will be substantial.

REP. MOOD asked that the committee move on the bill as it needs to be sent down the line.

REP. GUTSCHE stated that they have been requested in every other committee not to sent bills out without Fiscal Notes. She didn't think the committee should act on the bill.

REP. MOOD asked the committee to act on the bill and deal with the Fiscal Note later.

REP. YOUNKIN asked REP. GUTSCHE if a Fiscal Note would make any difference on how she is going to vote on the bill. REP. GUTSCHE stated that is irrelevant and not the point. The point is that they have been asked to have Fiscal Notes and not act on bills without them. She read from the rule book regarding Fiscal Notes.

**REP. CURTISS** stated the instructions in Judiciary Committee were to go ahead and pass the bills along.

**REP. BALES** stated that the Speaker said that due to the computer problems the committees are going to have to take action on some bills that may not have Fiscal Notes or amendments ready in order to get them done in time for transmittal.

**REP. CLANCY** stated that the committees have been acting on bills without Fiscal Notes.

**REP. GUTSCHE** stated that they have done that earlier on and have since gotten instructions not to pass bills without Fiscal Notes.

**REP. YOUNKIN** stated that her instructions, as the Committee Chair, from the Speaker, were to take action on bills without Fiscal Notes, if necessary. She stated that if someone has an objection with that they can take it up with the Speaker and action will be taken on the bill tonight.

**REP. HURDLE** suggested that the committee wait one day.

**REP. YOUNKIN** stated the only other option is to come in at 7:00a.m. Wednesday.

**REP. HURDLE** stated it might be a good idea.

**REP. MOOD** stated that he hesitates to delay action on the bill but would be willing to come in Wednesday if the rest of the committee was.

**REP. WANZENRIED** moved that action on the bill be deferred until 7:00a.m. Wednesday, pending the receipt of a Fiscal Note.

**REP. YOUNKIN** added that the committee will take action on the bill at 7:00a.m. Wednesday, Fiscal Note or not. She stated that if anyone has a problem with that they can take it up with the Speaker. She then asked **REP. MOOD** if there will be any kind of procedural problems with that regarding second reading. **REP. MOOD** stated that he did not foresee any problems.

**REP. YOUNKIN** stated that action will be postponed until Wednesday at 7:00 a.m.

**EXECUTIVE ACTION ON HB 446**

***{Tape : 3; Side : A; Approx. Time Counter : 10}***

**REP. MOOD** stated, he has had considerable personal conflict with HB 446. He stated that he thinks it is in the best interest of the legislative body to let the bill die on transmittal.

**REP. GUTSCHE** asked, if there is no action taken on the bill can it be resurrected?

**REP. YOUNKIN** stated, it cannot be resurrected after Friday without a suspension of the rules.

**EXECUTIVE ACTION ON HB 573**

*{Tape : 3; Side : A; Approx. Time Counter : 11.6}*

**Motion:** **REP. BALES** moved that **HB 573 DO PASS.**

**Motion:** **REP. BALES** moved that **AMENDMENTS HB057301.alm BE ADOPTED.**

**Discussion:**

**Larry Mitchell** explained the amendments. He stated, the amendments change the process by which the produced groundwater is handled.

**REP. BALES** stated, the reason he proposed the amendments is because there is technology that will allow for the treatment of the water. It will be economically feasible to treat the water. He stated, if we could have irrigation water in that country for the ranchers it would be a very big boom. He talked about his ranch and how a shared water supply would help him.

**REP. GUTSCHE** stated, she is concerned with the new language "if it's not economically feasible." There is nothing about environmentally feasible or responsible. She stated that she spoke with some people about this and re-injection would be the preferred method in terms of being the best for the environment. She stated that she is not completely comfortable with what the amendment is doing.

**REP. BALES** stated, the reason for economically feasible being included in the language is that originally there was a strict priority and now it is being reduced to a priority if it is economically feasible to treat that water. By saying it should be put to beneficial use is like saying the farmers shouldn't be using any water for irrigation and beneficial use.

**REP. GUTSCHE** asked **REP. BALES** why do you think it would be economically feasible to treat the water? What information do you have about the water treatment technology? **REP. BALES**

stated, there are some reverse osmosis plants in production at this time. It is costly and would not be cost effective just for irrigation but it is going to be costly to dispose of this water one way or another by the methane companies. It is the companies' responsibility to mitigate all circumstances from the water. The cost will be less than deep oil injection.

**REP. HARRIS** stated, the priorities in the original language are on target. He stated that he likes the original language.

**REP. BALES** stated, the reason for the amendments was because there was a lot of concern that the EIS should determine what is the best way. The best possible thing, for the area and for the ranchers, would be beneficial use. He suggested amending the bill, if this amendment passes, to include a third category or other methods of disposing the water. That is just in case during the EIS process if something else is brought up it will be covered.

**REP. HURDLE** stated, there is at least one desalinization plant in operation in Saudi Arabia. She asked **REP. BALES** if he has really looked seriously at a the construction of a desalinization plant and whether or not that might be a practical alternative.

**REP. BALES** stated, that is what he is referring to as a reverse osmosis system. There are figures on how much it would cost and it is not cheap. Yet, no method of disposal of the water is going to be cheap.

**REP. HURDLE** stated, the Saudis have a lot of money and there is probably not that much money in methane.

**REP. LASZLOFFY** asked **REP. BALES** why do we have to put this in statute? Why can't we just leave this up to an agreement between the rancher and the methane producer? Should we just leave it up to each individual to write the agreement the way they want to?

**REP. BALES** stated, there are well founded concerns of just turning the water down the creek without treatment. That may be the cheapest way for the methane companies to dispose of the water. One of the other alternatives is impounding the water in large reservoirs and allowing it to evaporate. That is why the language "or other methods" has to be included. This is just an impedance to try and make it happen. If it is not economically feasible then it won't happen, it will either be injected or turned down the creek.

**REP. STORY** asked **REP. YOUNKIN**, regarding page 7 of the booklet on controlled groundwater areas, if they have to get a beneficial use permit for all of these new methane wells they have to put

the water to some beneficial use. Under that circumstance can you even discharge it to a stream? **REP. YOUNKIN** deferred the question to **REP. BALES** who stated, in one of these controlled groundwater areas that only applies to people applying for a well for beneficial use, not for those applying for a methane well. **REP. STORY** stated, if that's how it works then the amendment is important.

**REP. YOUNKIN** stated, the Powder River Basin controlled groundwater area has a specific set of conditions that are probably atypical from any other controlled groundwater area. Other controlled groundwater areas are mostly to protect somebody else's source of water or to protect a consumer. She gave an example of the Bozeman solvent site.

**Vote:** Motion that **AMENDMENT BE ADOPTED** carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.

**Motion:** **REP. BALES** moved that **HB 573 DO PASS AS AMENDED.**

**Motion:** **REP. BALES** moved that **CONCEPTUAL AMENDMENT BE ADOPTED.**

**Discussion:**

**REP. BALES** stated, the conceptual amendment would strike the "or" between A and B on lines 20 - 22. Then put an "or" at the end of line 22 and put in "C. Or other disposal methods that comply with current law." The reason is that another alternative for water disposal may come out of the EIS. We don't want to limit those possibilities.

**Vote:** Motion that the **CONCEPTUAL AMENDMENT BE ADOPTED** carried 16-4 with Cyr, Gutsche, Hurdle, and Wanzenried voting no.

*{Tape : 3; Side : A; Approx. Time Counter : 32.5}*

**Motion:** **REP. BALES** moved that **HB 573 DO PASS AS AMENDED(2).**

**Discussion:**

**REP. STORY** asked **Ms. Franz** if you would need a beneficial use permit, in a controlled groundwater area, for a methane well. **Ms. Franz** stated she did not believe so. DNRC has ruled that the withdrawal of water for coal bed methane, unless it's put to some other use, is not a beneficial use of water so you would not need a permit. The controlled groundwater area requires you to permit every well with the Board of Oil and Gas and it also specifically

states that if you are to put the water to beneficial use you do have to get a DNRC permit. She gave an example.

**Motion:** REP. YOUNKIN moved that a **CONCEPTUAL AMENDMENT BE ADOPTED**.

**Discussion:**

REP. YOUNKIN stated, the conceptual amendment would be on page 2, line 19, at the end add, "if safe and prudent for the purpose." The reason is because we don't want anybody watering cows or irrigating with water that is too salty.

REP. LASZLOFFY stated that he does not believe ranchers would do anything to their cows to make them sick.

REP. HARRIS asked if the same language should also be added to line 22, page 2.

REP. YOUNKIN stated, you are subject to the permit requirements of 75-5-401 and those requirements are going to dictate whether it is safe and prudent for the purpose.

REP. BALES stated that he agrees with REP. LASZLOFFY but does not have a problem with the amendment.

**Vote:** Motion that the **CONCEPTUAL AMENDMENT BE ADOPTED** carried 19-2 with Gutsche voting no.

**Motion:** REP. BALES moved that **HB 573 DO PASS AS AMENDED(3)**.

**Discussion:**

REP. HURDLE stated that she is concerned about the conflict with the Settlement agreement. This may end up in court and that should be considered.

REP. HARRIS stated that he agrees that is a problem. There is a serious constitutional question and statutory question here. He stated that the committee should get some more detailed comprehensive legal opinion on this matter. He stated that he has some serious questions on section 3. This should not undermine MEPA. He gave an analogy.

REP. ERICKSON stated, the committee won't decide whether or not the bill is constitutional but it will be decided. That decision making process will take a while. Why do we want to go ahead and make sure that process goes forward? He stated he is also very

concerned that all of the hard work put into the Settlement agreement is being ignored.

**REP. LASZLOFFY** stated, this is a huge bill to be coming forward as late as it is. The problem is that the committee is pressed for time because the federal government or one of the tribes could begin to develop these resources and drain someone else's methane. We don't want to see the bill die in committee just because the hour is so late.

**REP. BALES** stated, the Settlement agreement was a negotiated agreement but the caveat to it is that several of the methane companies who were left out filed suit to try and stop it. They did not feel that it was a just or equitable agreement. Mr. Petesch looked at this and he stated that it is possible for the legislature to supercede the settlement agreement. Mr. Bloomquist stated that there is constitutional law that allows the legislature to do that. It may be litigated but it may not be also.

**REP. WANZENRIED** stated, this bill is late and it is confusing. He went over parts of the bill he has concerns with. This is major policy that we are enacting.

**REP. STORY** stated, **REP. HARRIS's** concern with the wording in section 3 has some merit to it. Does it actually get anybody to a point where they can do anything outside of the moratorium. His other concern is with the neighbor 2 miles from Wyoming. When the property owners 1 mile away start doing strip development in gas production they may create some problems for the neighbors. It is discouraging that the opponents are saying that re-injection is the preferred method when the EIS hasn't been completed yet. They are saying let the EIS work but they are not saying that they think the EIS will be solid and won't tie it up in court for 5 more years. He suggested a clause at the end of the bill.

**REP. BALES** stated, the legislature does need to emphasize that private property rights are important. We also need to emphasize that the School Trust is important and that we have a fiduciary responsibility that Trust is not diminished. Those are the reasons for the bill.

**REP. LASZLOFFY** asked **Ms. Franz** what is the status of coal bed methane production on either federal or tribal lands? **Ms. Franz** redirected the question to **Ms. Watson**. She stated, there is no production on the federal land because they are going through an environmental assessment. The Cheyenne Tribe is opposed to development on their property. The Crow Tribe is interested but

there is no development happening on tribal lands at this point.

**REP. LASZLOFFY** stated that is where he sees a big time crunch. These things have a habit of evolving into litigation that goes on forever just because the opponents don't want development period. We need to do what's best for the landowners too.

**REP. YOUNKIN** stated, there is a projected EIS which should be completed the first 2002. Perhaps the effective date of the bill could be changed to, for example, June 1, 2002. The EIS should be done by then.

**REP. BALES** stated, the BLM's projected finish date is March of 2002.

**REP. YOUNKIN** stated, the coal bed methane newsletter from the BLM says tentative EIS schedule, issue record of decision, May 2, 2002. She stated that she is concerned with the ex post facto problem. This will probably go to litigation without a further effective date.

**REP. BALES** asked, what is the status then if the EIS is automatically appealed? **REP. YOUNKIN** stated, if an effective date of June or July of 2002 is put in the bill then this becomes effective on that date. In that situation if the EIS has not been completed or has been appealed then there is a problem with the ex post facto concern.

**REP. STORY** asked, supposing the EIS comes out and has different alternatives than in section 4 how do you reconcile those two things? **REP. YOUNKIN** stated that she did not know. There would be a conflict between what is passed and what is in the EIS.

**REP. BALES** stated, historically most of the methane companies have tried to work deals with the landowners where they put the water to beneficial use. He gave some examples. The landowner agreements may take precedence.

**REP. DALE** stated, he is curious as to why NPRC is the only environmental group that is involved in this agreement. He stated it has been his experience that a common strategy among those who would obstruct any development is to prolong the process until it is either so frustrating or so expensive that nothing can ever be done. These environmental groups have been invited to negotiate even conditions on permits, agreed to do so, failed to show up during the permitting process and then sued the DEQ when the record of decision was issued. This agreement does not bind other environmental groups that pursue an obstructionist policy. He asked Jeff Barber to respond to his concerns.



**REP. STORY** asked, if the committee is holding another hearing. Is it proper to start asking people, who didn't testify, questions?

**REP. DALE** stated, he does not think a couple of the groups are to be trusted and therefore he would support **REP. BALES'** bill as it stands or to have an effective date at some reasonable time.

**REP. ERICKSON** stated that he is insulted when a member of the committee says that certain groups are not to be trusted.

**Motion/Vote:** **REP. LASZLOFFY** moved that an **AMENDMENT TO MAKE THE EFFECTIVE DATE JUNE 1, 2002 BE ADOPTED**. Motion carried 11-9 with Cyr, Dale, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.

*{Tape : 3; Side : B; Approx. Time Counter : 1.7}*

**Motion:** **REP. BALES** moved that **HB 573 DO PASS AS AMENDED(4)**.

**Discussion:**

**REP. HARRIS** stated, section 3 is ambiguous and because of that it is going to end up in costly litigation.

**REP. GUTSCHE** stated, this bill obviously seeks to overturn a court ordered moratorium. It requires the board to issue permits. Section 3 is hugely problematic and vague. It also assumes that ranchers want to use this water for irrigation. We are making a huge mistake by passing this bill.

**REP. BALES** stated that he thought postponing the date would take care of the ex post facto problem.

**REP. HARRIS** stated, postponing the date will take care of the ex post facto but it creates another problem. That problem is, why go through this process if you are going to wait for the EIS? Why can't a decision be made after the EIS?

**Vote:** Motion that **HB 573 BE ADOPTED AS AMENDED(4)** carried 11-9 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, Wanzenried, and Younkin voting no.

**EXECUTIVE ACTION ON HB 572**

*{Tape : 3; Side : B; Approx. Time Counter : 7.5}*

**Motion:** **REP. BALES** moved that **HB 572 DO PASS**.

**Motion:** **REP. GUTSCHE** moved that **AMENDMENT HB057201.alm BE ADOPTED.**

**Discussion:**

**REP. GUTSCHE** passed out the amendment **EXHIBIT (nah41a26)** and explained it.

**REP. LASZLOFFY** asked **Mr. Mitchell** if this is standard language in statutes regarding extractive industries or is this new and uncharted territory. **Mr. Mitchell** stated that he cannot think of any statutes that have this kind of specific liability requirement.

**REP. GUTSCHE** stated we are going into new and uncharted territory when we are dealing with the whole coal bed methane issue. This amendment strengthens who is responsible for what.

**REP. BALES** stated this bill in no way controls or has anything to do with what the coal bed methane companies do. All this bill does is set up a fund to compensate landowners in case there is nobody to go back on. It already says that this in no way relieves them from the financial responsibility which they owe. He opposes the amendment.

**REP. ERICKSON** stated the language under section 5 is much too broad. This language makes that broad language specific.

**REP. STORY** asked, what are titles 75, 82 and 85.

**Mr. Mitchell** stated, title 75 is environmental protection, title 82 is general mining and title 85 is water use and water rights.

**REP. STORY** asked **REP. YOUNKIN** what is the level of obligation when you talk about affirmative obligation. What does that mean legally? **REP. YOUNKIN** stated, it almost presupposes that there is liability. There has to be duty, breach, causation and damages to be liable for something. **REP. STORY** asked, does this create an assumed damage by claiming that? **REP. YOUNKIN** stated, just saying that it is an affirmative obligation does presuppose that there are damages without having to prove the first three segments of that tort. It is a little broad. **REP. STORY** moved to segregate subsection 7 of the amendment.

**REP. YOUNKIN** stated, subsection 7 is segregated.

**REP. HARRIS** stated, a court looking at this would either say, the intention was to restate currently law or some sort of assumption of damages would be the difference from current law.

**Vote:** Motion that **SUBSECTION 6 OF THE AMENDMENT BE ADOPTED** carried 13-7 with Bales, Bitney, Brown, Clancy, Curtiss, Dale, and Holden voting no.

**REP. GUTSCHE** asked **REP. EGGERS** to comment on affirmative obligation. **REP. EGGERS** stated, the affirmative obligation establishes a precursor that assumes that there is a problem. It is a potential express or implied admission of liability.

**REP. BALES** stated, this goes into a section that does not deal with any liability or responsibility. He encouraged the committee to vote no on the amendment.

**Vote:** Motion that **SUBSECTION 7 OF THE AMENDMENT BE ADOPTED** failed 7-13 with Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting aye.

**Motion:** **REP. BALES** moved that **HB 572 DO PASS AS AMENDED.**

**Discussion:**

**REP. STORY** asked **REP. BALES** if he has the Fiscal Note squared away. **REP. BALES** stated the main thought was \$400,000. There is currently an amendment being worked up to correct that.

**REP. ERICKSON** stated, he is concerned with the use of RIT funds for coal bed methane. The RIT money should be used to reclaim mines.

**REP. STORY** stated, the oil and gas industry have paid a lot of money into the RIT and have never received any money out of it. It is used mainly for water projects and hardly any of it went into reclaiming oil and gas wells. It would probably be a good use of some of the money.

**REP. BALES** stated, this only happens after the RIT fund is capped at \$100 million. The RIT fund was set up to mitigate possible damages from oil and gas. This is the appropriate place for it to be.

**REP. HURDLE** asked, does this mean that the people who do the damage are not responsible?

**REP. BALES** stated, it is in the bill twice that the methane companies are responsible for mitigation of damages. This bill will only come into play if there is some unforeseen problem where a company is defunct and gone and there was not sufficient bond.

**REP. HARRIS** asked **REP. BALES**, regarding page 4, lines 10 - 12, why is there a cap on the amount of damages? **REP. BALES** stated, that figure is not set in stone. As we learn more about methane gas these figures and that percentage can be adjusted.

**Vote:** Motion that **HB 572 DO PASS AS AMENDED** carried 13-7 with **Cyr, Eggers, Erickson, Gutsche, Hurdle, Tramelli, and Wanzenried** voting no.

#### **EXECUTIVE ACTION ON HJ 27**

***{Tape : 3; Side : B; Approx. Time Counter : 28.3}***

**Motion:** **REP. BALES** moved that **HJ 27 DO PASS**.

#### **Discussion:**

**REP. LASZLOFFY** asked **REP. BALES**, is this bill redundant? **REP. BALES** to a certain extent it may be redundant. The EQC spent the last interim studying the legal process without seeing any of the action in essence. The thought was it might do the EQC some good to review it in action. The key thing is that it will allow another avenue of looking at the issue.

**REP. YOUNKIN** stated, the EQC oversees lots of stuff.

**Vote:** Motion that **HJ 27 DO PASS** carried 14-6 with **Gutsche, Harris, Hurdle, Laszloffy, Tramelli, and Wanzenried** voting no.

**ADJOURNMENT**

Adjournment: 8:30 P.M.

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REP. CINDY YOUNKIN, Chairman

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HOLLY JORDAN, Secretary

CY/HJ

**EXHIBIT** (nah41aad)